

AMENDED IN SENATE JULY 2, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 856**

**Introduced by Assembly Member Wesson**

February 22, 2001

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An act to amend Sections 19461, 19481.5, and 19556 of, to add Sections 19461.5, 19526, 19613.8, and 19641.2 to, and to add Article 2.5 (commencing with Section 19455) to Chapter 4 of Division 8 of, the Business and Professions Code, relating to horse racing.

LEGISLATIVE COUNSEL'S DIGEST

AB 856, as amended, Wesson. Horse racing.

(1) Existing law authorizes wagering on the result of live and simulcast horse races, subject to the regulation and oversight of the California Horse Racing Board, and requires the licensure of various persons and entities associated with this industry. Existing law also imposes specified requirements on the operation of race tracks, backstretch facilities, and stabling and vanning services, and establishes pension funds and welfare funds for the benefit of backstretch personnel and horsemen.

This bill would state findings and declarations of the Legislature regarding the employment rights of racetrack backstretch employees, and direct the California Horse Racing Board to oversee the conduct of a union and multiemployer collective bargaining agent recognition procedure subject to specified conditions and procedures, provide for resultant labor agreements to be binding on the parties, and establish

reasonable rules to regulate the time, place, and manner of representational meetings within the racetrack enclosure. This bill would also authorize individual trainers to opt out of the multiemployer bargaining process, subject to specified conditions, and require each trainer to keep accurate payroll records for all of his or her employees, subject to audit by the Labor Commissioner as specified, containing specified information ~~and signed declarations made under penalty of perjury~~, which would be available for inspection by, or furnished to, the employee, his or her authorized representative, the board, the administrators of specified pension and health and welfare funds, or the Division of Labor Standards Enforcement of the Department of Industrial Relations. ~~By requiring these declarations to be made under penalty of perjury, this bill would create a crime and thereby impose a state-mandated local program.~~

(2) Existing law provides that every license granted under the Horse Racing Law is subject to suspension or revocation in any case where the board has reason to believe that any condition regarding the license has not been complied with, or that any provision of law or any rule or regulation of the board affecting it has been broken or violated.

This bill would expand this suspension and revocation authority to expressly include violations of the Labor Code and regulations adopted thereunder. This bill would also provide that upon a finding by the Labor Commissioner that a violation of any provision of the Labor Code under his or her jurisdiction has been committed by a person licensed under the Horse Racing Law, that upon expiration of the applicable period for appeal he or she shall notify the board of that finding.

(3) Existing law provides that no license to conduct a horse racing meeting shall be issued unless the track has been inspected and approved by the board as to specified racetrack safety standards within 30 days prior to the date of application.

This bill would additionally provide that the board shall, within 120 days of the effective date of this act, adopt emergency regulations, as specified, to establish employee housing standards at licensed racetracks, which shall be replaced by final, permanent regulations with 18 months thereafter, which racing associations shall be in compliance with by January 1, 2004, and as of that date would require the board, in conjunction with the Department of Housing and Community Development or a local housing authority in that jurisdiction, to annually inspect the living conditions of backstretch employee housing



and submit these findings to the board. The bill would provide that no license to conduct a horse racing meeting shall be issued to a racing association unless the board has inspected the housing conditions that exist on that track's backstretch and determined them to be in compliance with these standards.

(4) Existing law requires each licensed racing association to designate a certain number of racing days to be conducted as charity days for the purpose of the distribution of the net proceeds therefrom to beneficiaries, and requires that at least 20% of the distributions therefrom to be made to charities associated with the horse racing industry.

This bill would increase this distribution requirement to 50%. This bill would also specify that an existing specified backstretch employee welfare fund shall be a health and welfare trust fund administered without prejudice for the benefit of every eligible person, that the fund and benefits shall be administered in accordance with specified standards established in federal law, subject to oversight and regulation of the board, and that the welfare fund board be expanded, by March 1, 2002, to include 2 additional groom and stable employee licenses, also would be replaced by designees of a labor union with 60 days of that union having been chosen as the exclusive collective bargaining agent of a statewide majority of backstretch workers.

(5) Existing law provides that racing associations and fairs shall pay, from the portion deducted for purses, an amount equal to 1% of that portion for a pension plan for backstretch personnel to be administered by the respective trainers' organizations.

This bill would provide that within 60 days of a union having been chosen as the exclusive collective bargaining agent for a statewide majority of backstretch workers, the respective organization of horsemen or trainers shall submit a pension plan for backstretch personnel to the board. This bill would require that the plan be administered by a joint labor-management committee, *made up of equal representatives of trainers and labor union representatives*, consistent with specified provisions of federal law.

(6) This bill would provide that its provisions are severable as specified.

~~(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~



~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

SECTION 1. Article 2.5 (commencing with Section 19455) is added to Chapter 4 of Division 8 of the Business and Professions Code, to read:

Article 2.5. Backstretch Worker Labor Relations

19455. (a) The Legislature finds and declares that Section 923 of the Labor Code recognizes that it is necessary that the individual worker have full freedom of association, self-organization, and designation of representatives of his or her own choosing, to negotiate the terms and conditions of his or her employment, and that he or she shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining.

(b) The Legislature finds that the National Labor Relations Board has formally declined to assert jurisdiction over horse racing because of extensive state control over the industry, the dominant pattern of sporadic short-term employment which poses problems for the effective enforcement of the National Labor Relations Act, and a unique and special relationship that has developed between the states and the industry.

(c) It is the intent of the Legislature to establish an orderly procedure for backstretch employees to exercise their statutory rights to organize a labor union, in order to reduce the prospect of any strikes, disruptions, or economic action that would interfere with the operation of horse racing meetings in California.

(d) Except as provided in subdivision (e), the board shall oversee the conduct of a union recognition procedure for backstretch employees under the following conditions:

(1) Employees shall have the right to join, or refuse to join, a labor organization for purposes of collective bargaining and mutual aid and protection. Existing state-recognized organizations

1 of trainers or horsemen established pursuant to the Horse Racing  
 2 Law shall not use funds derived or distributed from parimutuel  
 3 wagering pursuant to state law to advocate or advance any position  
 4 with respect to unionization of employees. Individual trainers and  
 5 horsemen, and their agents, shall not coerce or threaten any  
 6 employee of any trainer or horseman ~~in the context of an effort to~~  
 7 ~~obtain or revoke an employee authorization card with respect to~~  
 8 ~~selection by any backstretch employee of any labor union or~~  
 9 ~~collective bargaining agent~~ *because of the exercise of rights*  
 10 *pursuant to this article.* No employee shall be discharged or  
 11 discriminated against for expressing any opinion concerning the  
 12 selection of a labor union or collective bargaining agent for  
 13 employees under this article. *No trainer or horseman, or group of*  
 14 *trainers or horsemen, shall dominate or interfere with the*  
 15 *formation or administration of any labor organization established*  
 16 *under this article nor contribute financial or other support to it.*

17 (2) The labor union and its representatives shall not coerce or  
 18 threaten any employee of any trainer or horseman ~~in the context~~  
 19 ~~of an effort to obtain or revoke authorization cards. The union and~~  
 20 ~~its representatives shall not interfere with the work of any~~  
 21 ~~employee, but shall have reasonable access to backstretch workers~~  
 22 ~~within the enclosure during working and nonworking hours, as~~  
 23 ~~determined by the board.~~

24 (3) ~~Notwithstanding any other provision of law, within 30 days~~  
 25 ~~of a request, the board shall provide the labor union with a list of~~  
 26 ~~all backstretch workers including the type of license they hold,~~  
 27 ~~their employer, the location at which they are employed, and their~~  
 28 ~~address and telephone number. The board may require of any~~  
 29 ~~licensee information in the licensee's possession necessary to~~  
 30 ~~comply with this requirement. The labor union shall use this list~~  
 31 ~~solely for the purposes of this article. The board may impose an~~  
 32 ~~appropriate penalty for any other use.~~

33 ~~(4) because of the exercise of rights pursuant to this article.~~

34 (3) *Notwithstanding any other provision of law, within 30 days*  
 35 *of a request by a bona fide labor organization representing workers*  
 36 *in the horse racing industry in California, accompanied by a*  
 37 *petition of 125 licensed backstretch workers, the board shall*  
 38 *provide the bona fide labor organization with a list of all*  
 39 *backstretch workers including the type of licenses they hold, their*  
 40 *employer, the location at which they are employed, and their*

1 address and telephone number. The board may require of any  
2 trainer licensee information in the licensee's possession necessary  
3 to comply with this requirement. The labor union shall use this list  
4 solely for the purposes of this article, and maintain it in a manner,  
5 as the board may require, to preserve the integrity of horse racing.  
6 The board may impose an appropriate penalty for any other use.

7 (4) Every licensed trainer who employs backstretch employees  
8 shall file with the board, not later than February 1, 2002, and, with  
9 seven days of the commencement of each race meeting thereafter,  
10 a complete and accurate list of the names of its backstretch  
11 workers. In addition, every trainer shall file with the board a  
12 complete, accurate, and updated list within seven days of any  
13 changes which occur to the most recently filed list. The lists  
14 described in this section, together with any updates thereto, shall  
15 be provided within 72 hours after receipt by the board, to any bona  
16 fide labor organization which has requested copies thereof. Any  
17 such request need only be made one time and the board shall  
18 thereafter be required to provide these lists and any updates thereto  
19 in accordance with the provisions of this section so long as a bona  
20 fide labor organization seeks to represent licensed backstretch  
21 workers.

22 (5) The labor union may ~~request obtain~~ board recognition as  
23 the exclusive bargaining agent for employees ~~in any bargaining~~  
24 ~~unit or of any employer, subject to the provisions and procedures~~  
25 ~~described in paragraph (5). The Executive Director of the Board,~~  
26 ~~or a disinterested neutral party selected by the Executive Director,~~  
27 ~~shall have the authority to investigate and determine the validity~~  
28 ~~of employee authorization cards submitted pursuant to this~~  
29 ~~section, and shall conduct a review of cards submitted by a union~~  
30 ~~in support of its claim to represent the majority of employees of an~~  
31 ~~individual employer or the majority of employees within a~~  
32 ~~bargaining unit approved by the board pursuant to paragraph (5).~~  
33 ~~In the case of thoroughbred racing, a labor union may request~~  
34 ~~recognition as the exclusive bargaining agent for backstretch~~  
35 ~~employees by racetrack or by geographical zone, as defined in~~  
36 ~~Section 19530.5; in the case of harness and quarter horse racing,~~  
37 ~~a labor union may request recognition as the exclusive bargaining~~  
38 ~~agent for backstretch employees by racetrack; in the case of fairs,~~  
39 ~~a labor union may request recognition as the exclusive bargaining~~  
40 ~~agent for backstretch employees by geographical zone, by fair, or~~

1 ~~by groups of fairs. “Appropriate bargaining unit” includes any~~  
2 ~~community of interest of backstretch workers, including, but not~~  
3 ~~limited to, geographic, occupational, and type of horse racing.~~  
4 ~~“Backstretch employee” means a groom or stable employee~~  
5 ~~licensed by the board pursuant to subdivision (c) of Section 1481~~  
6 ~~of Division 4 of Title 4 of the California Code of Regulations.~~

7 ~~(5) The board, by regulation, shall establish procedures for the~~  
8 ~~recognition of collective bargaining representatives for both~~  
9 ~~backstretch workers and the employers of those workers. In all~~  
10 ~~matters pertaining to the rights established pursuant to this article,~~  
11 ~~the board, upon the complaint of a party, shall have the authority~~  
12 ~~to fashion an appropriate remedy, including the issuance of a~~  
13 ~~make-whole remedy in the event of persistent failure of a party to~~  
14 ~~bargain in good faith. Nothing in this section shall prohibit the~~  
15 ~~board from requiring the parties to any dispute to submit the issue~~  
16 ~~to binding arbitration pursuant to paragraph (8). In addition, the~~  
17 ~~board may contract with state mediation and conciliation services~~  
18 ~~for all appropriate purposes, including operations related to the~~  
19 ~~conduct of recognition procedures and elections.~~

20 ~~(A) of employers pursuant to the provisions and procedures~~  
21 ~~described in paragraph (7).~~

22 *(6) For purposes of this article:*

23 *(A) “Backstretch employee” or “backstretch worker” means a*  
24 *person licensed by the board pursuant to subdivision (c) of Section*  
25 *1481 of Division 4 of Title 4 of the California Code of Regulations.*

26 *(B) “Appropriate bargaining unit” means any bargaining unit*  
27 *created and recognized pursuant to the terms of clause (iii) of*  
28 *subparagraph (A) of paragraph (6).*

29 *(C) “Approved election unit” means any election unit created*  
30 *and recognized pursuant to paragraph (6).*

31 *(7) There are four election units created and recognized*  
32 *pursuant to this section, as follows:*

33 *(A) Backstretch employees working for trainers of*  
34 *thoroughbred horses stabled at licensed racetracks, including*  
35 *fairs and approved auxiliary training facilities in the combined*  
36 *central and southern zones.*

37 *(B) Backstretch employees working for trainers of*  
38 *thoroughbred horses stabled at licensed racetracks, including*  
39 *fairs and approved auxiliary training facilities in the northern*  
40 *zone.*



1 (C) Backstretch employees working for trainers of quarter  
2 horses stabled at licensed racetracks and approved auxiliary  
3 training facilities in the combined central and southern zones.

4 (D) Backstretch employees working for trainers of harness  
5 horses stabled at licensed racetracks, including fairs and  
6 approved auxiliary training facilities in the northern zone.

7 The board shall use the California State Mediation and  
8 Conciliation Service for all appropriate purposes of this act,  
9 including operations related to the conduct of recognition  
10 procedures and elections.

11 (8) (A) With respect to backstretch workers, a labor  
12 organization seeking recognition as the collective bargaining  
13 agent for these workers shall collect signed cards indicating  
14 individual worker's intent to be represented by that organization  
15 for collective bargaining purposes and submit those cards to the  
16 ~~board~~ California State Mediation and Conciliation Service for  
17 review and validation ~~by the executive director~~. A labor union is  
18 ~~free to define the characteristics of a potential collective~~  
19 ~~bargaining unit subject to approval by the board pursuant to~~  
20 ~~paragraph (4). Upon submission, review, and validation of cards~~  
21 ~~indicating that a majority of employees within a defined unit wish~~  
22 ~~to be represented by that union, the board shall recognize that~~  
23 ~~union~~. When the labor organization is in receipt of cards signed  
24 by workers equaling at least 30 percent of the employees in an  
25 election unit described in paragraph (4), the California State  
26 Mediation and Conciliation Service shall conduct a secret ballot  
27 election with respect to the election unit as soon as is practicable  
28 thereafter, but in no event more than 30 calendar days after  
29 validation by the service of the cards.

30 Those backstretch employees entitled to vote in the election  
31 shall be those who appear on the licensed trainer's most recent list  
32 described in paragraph (3). However, each employer may update  
33 his or her list not more than 72 hours prior to the election. If it is  
34 determined by the stewards pursuant to the provisions in  
35 paragraph (11), that the employer filed an inaccurate or erroneous  
36 updated list with a willful intention to manipulate the results of an  
37 election, and that the inaccuracy or error may have affected the  
38 outcome of the election, the stewards shall decree that the  
39 employer lost the election, regardless of the actual outcome



1 *thereof, and the stewards shall issue an order to the trainer to*  
2 *negotiate with the union.*

3 *(i) Any election shall be conducted by the California State*  
4 *Mediation and Conciliation Service under rules established by the*  
5 *service consistent with standard practice. The rules shall be*  
6 *established no more than 60 days after the effective date of this*  
7 *section, shall be made available to the bona fide labor union and*  
8 *employers of backstretch employees, and shall be exempt from the*  
9 *Administrative Procedure Act. The rules shall provide for a secret*  
10 *ballot system for the conduct of the election pursuant to which*  
11 *ballots cast by backstretch employees of individual employers*  
12 *shall be cast by insertion into envelopes appropriately identified*  
13 *with respect to each employer. The envelopes shall be collected and*  
14 *tabulated in secret by the service, subject to observation by one*  
15 *representative designated by the bona fide labor organization and*  
16 *one representative designated by the organization representing*  
17 *trainers pursuant to subdivision (a) of Section 19613.2. Upon*  
18 *completion of the tabulation, the service shall issue a report*  
19 *certifying those employers, the majority of whose employees who*  
20 *participated in the election voted in favor of representation by the*  
21 *union. Those employers so certified shall be required to bargain*  
22 *with the labor union pursuant to this subdivision. All other*  
23 *employers shall not be required to negotiate with the union and*  
24 *there shall not be another election with respect to those employers*  
25 *for at least one year from the date of the prior election. The service*  
26 *shall not make public the numerical tabulation of votes by*  
27 *employer.*

28 *(ii) Protests over challenged ballots shall be resolved by the*  
29 *service in a consolidated hearing commencing no later than three*  
30 *business days after the election.*

31 *(iii) Within 45 days of the certification of the results of the*  
32 *election by the service to the board, those trainers who are required*  
33 *to bargain pursuant to this subparagraph may form multiple*  
34 *employer bargaining units in accordance with the provisions of*  
35 *this subdivision. Further, the organization representing trainers*  
36 *pursuant to subdivision (a) of Section 19613.2 shall conduct a*  
37 *meeting regarding the formulation of multiple employer*  
38 *bargaining units within five days of the certification of the results*  
39 *of the election. For licensed trainers described in subparagraph*  
40 *(A) of paragraph (7), the minimum number of backstretch*

1 employees who must be employed by the licensed trainer  
2 comprising the multiple employer bargaining unit as of the date of  
3 the election shall be 100 employees or 10 percent of the total  
4 employees subject to bargaining. For licensed trainers described  
5 in subparagraphs (B), (C), and (D) of paragraph (7), the minimum  
6 number of backstretch employees who must be employed by the  
7 licensed trainers comprising the multiple employer bargaining  
8 unit as of the date of the election shall be 50 employees or 10  
9 percent of the total employees subject to bargaining. The minimum  
10 number of backstretch employees necessary to be employed by  
11 licensed trainers in order to qualify as a multiple employer  
12 bargaining unit pursuant to this subdivision may, with the consent  
13 of the recognized labor union, be reduced. On or before the 45th  
14 day following the certification of the results of the election, a  
15 representative of the multiple employer bargaining units formed  
16 pursuant to this subdivision shall notify the board and the  
17 recognized bargaining units, in writing, that a unit has been  
18 formed, disclose the names of the licensed trainers which comprise  
19 the unit, and indicate the number and names of the backstretch  
20 employees which are employed by the licensed trainers comprising  
21 the unit. Except to join another multiple employer bargaining unit,  
22 without the consent of the bona fide labor organization, the trainer  
23 who has elected to join a multiple employer bargaining unit may  
24 not thereafter elect to resign from the unit until at least 30 days  
25 prior to the date of the expiration of the collective bargaining  
26 agreement resulting from the negotiations. The employees of a  
27 licensed trainer who has resigned from a multiple employer  
28 bargaining unit and has not joined another unit, shall not be  
29 entitled to petition to decertify the union for a period of one year  
30 from the date of the expiration of the collective bargaining  
31 agreement which resulted from the negotiation between the union  
32 and the multiple employer bargaining unit of which he or she was  
33 formerly a member and which was in effect at the time of the  
34 trainer's resignation.

35 Upon completion and certification of the election results the  
36 union shall be recognized as the exclusive collective bargaining  
37 agent for those workers whose employers are required to bargain,  
38 and the executive director of the board shall issue an order to  
39 affected employers to begin good faith negotiations for approval  
40 of employment agreements pursuant to the procedures ~~described~~

1 in subparagraphs (B) and (C). Employee authorization cards  
2 collected for purposes of this paragraph shall be deposited with the  
3 board and shall remain valid for one year starting on the date that  
4 the submitting labor organization is granted permission by the  
5 board to begin organizing activities in a given location, facility,  
6 region, or unit. After the expiration of this period, no further  
7 organizing efforts may be conducted with respect to that location,  
8 facility, region, or unit for a period of one year. Employee  
9 authorization cards may be revoked by the employee at any time  
10 prior to final certification of the union as his or her exclusive  
11 collective bargaining agent with respect to his or her employer.

12 (B) Upon the recognition of a union as the exclusive collective  
13 bargaining agent for a given unit of backstretch workers, the  
14 Executive Director of the board shall identify the trainers and  
15 horsemen employing those workers, provide this information to  
16 the union, and may conduct an election among those employers for  
17 the selection of a designated agent or agents to represent the  
18 interests of participating employers in a multiemployer  
19 employment agreement with the union. Each voting employer  
20 shall be allotted one vote per employee within the collective  
21 bargaining unit, and the agent or agents receiving the largest  
22 plurality of votes shall be designated by the board as representing  
23 the participating employers. The agent or agents negotiating on  
24 behalf of the participating employers are expressly authorized to  
25 organize collective bargaining committees, approved by the  
26 board, that reflect the differences and circumstances of individual  
27 trainers, and are free to negotiate terms that provide varying wages  
28 and conditions of employment based on the economic  
29 circumstances of individual trainers. Any employer may opt out  
30 of these multiemployer bargaining procedures subject to the  
31 provisions of subparagraph (C).

32 ~~(C)~~ set forth in this section.

33 (B) If an individual employer of backstretch workers declines  
34 to be represented in the multiemployer collective bargaining  
35 procedure described in subparagraph (B), and a majority of that  
36 particular employer's workers within the identified unit had  
37 submitted valid cards indicating their intent to be represented by  
38 the union clause (iii), the board shall certify the union as the  
39 collective bargaining agent of those workers and shall issue an  
40 order to begin good faith negotiations for employment agreements

1 on an individual employer basis. ~~If less than a majority of the~~  
2 ~~opting out employer's workers within the identified unit had~~  
3 ~~submitted valid cards indicating their intent to be represented by~~  
4 ~~the union, that employer shall not be subject to a bargaining order~~  
5 ~~issued by the board, but may voluntarily agree to negotiate~~  
6 ~~collectively with the union if it so desires, and an organizing union~~  
7 ~~may continue to seek and submit employee authorization cards on~~  
8 ~~an individual employer basis for purposes of recognition and~~  
9 ~~mandatory negotiation under this subparagraph until the~~  
10 ~~expiration of the one year period identified in subparagraph (A).~~  
11 The board may provide mediation and conciliation services upon  
12 request of the parties at any time. If an employer is required under  
13 this subparagraph to collectively bargain with the union, and the  
14 parties do not reach an agreement within 90 days, the board shall  
15 require the parties to participate in mandatory mediation and  
16 conciliation services for a period of 30 days. If no agreement  
17 results from this mediation, either or both parties may declare an  
18 impasse. Upon a party's declaration of an impasse, the Executive  
19 Director of the Board shall appoint an arbitrator ~~from a panel of~~  
20 ~~preselected professional arbitrators with expertise in labor~~  
21 ~~negotiations~~ *in the manner described in paragraph (11)* to  
22 determine the issues and issue a final and binding order  
23 establishing the terms of a collective bargaining agreement. ~~The~~  
24 ~~cost of this arbitration shall be shared equally by the union and~~  
25 ~~employer.~~

26 ~~(6)~~

27 (9) No labor agreement under this article shall apply to any  
28 trainer or horseman with respect to employment associated with  
29 fair meetings prior to January 1, 2003. After this date, employees  
30 shall be added by accretion into an existing contract where  
31 applicable. ~~This section shall not apply to employers whose~~  
32 ~~trainers, backstretch workers, or both, normally reside and work~~  
33 ~~outside of California and who are engaged in racing in this state~~  
34 ~~for a limited period of time not exceeding 90 racing days in any~~  
35 ~~calendar year. For racing meetings conducted in the central and~~  
36 ~~southern zones during the first three months of any calendar year~~  
37 ~~and for fair racing meetings, this section shall not apply to trainer,~~  
38 ~~backstretch workers, or both, who normally reside and work~~  
39 ~~outside of California and who are engaged in racing in this state~~  
40 ~~for a limited period of time, not exceeding 90 racing days in any~~

1 *calendar year. For all other race meeting conducted during any*  
2 *calendar year, this section shall not apply to trainers, backstretch*  
3 *workers, or both who normally reside and work outside of*  
4 *California and without are engaged in racing in this state for a*  
5 *limited period of time, not exceeding 50 racing days in any*  
6 *calendar year.*

7 ~~(7) At~~

8 *(10) Except as provided in subparagraph (C) of paragraph (5),*  
9 *at any time subsequent to the expiration of an agreement under*  
10 *paragraph (5), when the agreement is not in effect, the board may*  
11 *recognize a majority interest, obtained during this period in the*  
12 *same manner as union recognition of employees, within a multiple*  
13 *employer bargaining unit who no longer desire to be represented*  
14 *by the union, and withdraw the recognition granted pursuant to this*  
15 *section from that union. An employer may inform his or her*  
16 *employees that a process for decertification exists and direct them*  
17 *to the board for information. However any card, signature, vote,*  
18 *or other indicator obtained for this purpose by means of coercion*  
19 *or threat or with the assistance or inducement of any employer*  
20 *shall be invalid.*

21 ~~(8)~~

22 *(11) Disputes, other than disputes concerning the operation and*  
23 *application of ongoing contracts, disputes subject to binding*  
24 *interest arbitration pursuant to subparagraph ~~(C)~~ (B) of paragraph*  
25 *(5), and economic disputes arising in the context of multiemployer*  
26 *bargaining pursuant to subparagraph ~~(B)~~ (A) of paragraph (5), but*  
27 *including disputes concerning the rights established in paragraphs*  
28 *(1) and (2), upon complaint shall be adjudicated by the board, and*  
29 *and the stewards. The stewards shall have the authority to order*  
30 *any remedy, including reinstatement of employment, injunctive*  
31 *relief, damages, and attorney's fees. The board is authorized to*  
32 *contract with the Agricultural Labor Relations Board for the*  
33 *services of investigators or counsel to investigate, make findings*  
34 *of fact, and issue recommendations to the stewards with respect to*  
35 *disputes and any alleged unfair labor practices. An investigation*  
36 *and adjudication by the stewards shall be concluded as*  
37 *expeditiously as possible, consistent with applicable standards of*  
38 *due process. In addition, the board may require the parties to*  
39 *submit the issue to binding arbitration subject to judicial review in*  
40 *the same manner as decisions of the board. Disputes subject to this*

1 paragraph include disputes involving any backstretch employee or  
2 group of employees, and any trainer or group of trainers. Upon  
3 submission of a complaint to binding arbitration, the board shall  
4 select an arbitrator who is mutually accepted by the affected  
5 parties, with hearing to be held within 72 hours of written notice  
6 to the parties. If the parties are unable to reach agreement prior to  
7 the commencement of arbitration, the board shall provide the  
8 parties with a list of qualified arbitrators, from which the parties  
9 shall alternately strike an equal number of names until one  
10 remains, who shall be the selected arbitrator. The selected  
11 arbitrator shall have the authority to order any remedy, including  
12 injunctive relief, damages, and attorney's fees. Either party may  
13 bring an action in state court to compel a party to go to arbitration  
14 or to enforce the decision of the arbitrator, and the board may take  
15 administrative action as necessary to ensure this paragraph is  
16 complied with. The board may delegate all or part of its authority  
17 under this paragraph to the executive director.

18 (12) Upon submission of a complaint to binding arbitration  
19 under any provision of this article, the executive director of the  
20 board shall select an arbitrator from a panel of professional  
21 arbitrators with expertise in labor negotiations selected by the  
22 California State Mediation and Conciliation Service, who shall  
23 hold a hearing within 72 hours of written notice to all the parties.  
24 In all matters pertaining to the rights established by this article,  
25 an arbitrator shall have the authority to fashion an appropriate  
26 remedy, including reinstatement of employment, injunctive relief,  
27 damages, and attorney's fees, and issuance of a make-whole  
28 remedy in the event of a persistent failure of a party to bargain in  
29 good faith. The board may take any administrative action within  
30 its authority to ensure compliance with decisions of arbitrators  
31 authorized by this section. Either party may also bring an action  
32 in state court to compel a party to go into arbitration or to enforce  
33 the decision of an arbitrator. Costs of arbitration shall be shared  
34 equally by the parties, and any party shall be entitled to recover any  
35 reasonable fees or costs incurred in securing compliance with or  
36 enforcement of an award or order of the arbitrator.

37 (e) Nothing in this section shall prevent a labor union and an  
38 individual trainer, or any group of trainers, from entering into a  
39 mutually acceptable agreement, which may substitute for the  
40 requirements of subdivision (d), for union organizing of



1 employees of the horsemen or trainers. Nothing in this article shall  
2 be interpreted to require representative parties in negotiation to  
3 enter into any labor agreement, as long as each party is negotiating  
4 in a good faith effort to reach an agreement.

5 19455.2. (a) The board shall provide for labor agreements  
6 under this article to be binding upon every applicable licensee.

7 (b) No horseman or trainer who has a separate agreement with  
8 the exclusive representative labor union shall be required to be a  
9 party to a multiemployer collective bargaining agreement.

10 19455.4. The board may establish reasonable rules to regulate  
11 the time, place, and manner for representatives of labor unions to  
12 meet backstretch workers within the enclosure during working and  
13 nonworking hours. *Those rules shall provide that the union and its*  
14 *representatives shall not interfere with the work of any employee,*  
15 *but shall have reasonable access to backstretch employees within*  
16 *the enclosure during working hours and nonworking hours, as*  
17 *determined by the board.* With the approval of the board, these  
18 regulations may be superceded by collective bargaining  
19 agreements between horsemen's organizations or trainers'  
20 organizations and labor organizations.

21 SEC. 2. Section 19461 of the Business and Professions Code  
22 is amended to read:

23 19461. Every license granted under this chapter is subject to  
24 suspension or revocation by the board in any case where the board  
25 has reason to believe that any condition regarding it has not been  
26 complied with, or that any law, including the Labor Code and the  
27 regulations adopted thereunder, or any rule or regulation of the  
28 board affecting it has been broken or violated.

29 All proceedings to revoke a license shall be conducted in  
30 accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the  
31 Government Code.

32 SEC. 3. Section 19461.5 is added to the Business and  
33 Professions Code, to read:

34 19461.5. Upon a finding by the Labor Commissioner that a  
35 violation of any provision of the Labor Code, within the  
36 jurisdiction of the Labor Commissioner, has been committed by a  
37 person licensed pursuant to this chapter in the course of such  
38 licensed activity, the Labor Commissioner shall, upon expiration  
39 of the applicable period for appeal, notify the board of that finding.



1 SEC. 4. Section 19481.5 of the Business and Professions  
2 Code is amended to read:

3 19481.5. (a) Notwithstanding any other provision of law, no  
4 license shall be issued to conduct a horse racing meeting upon a  
5 track unless the track has been inspected by the board within 30  
6 days prior to the date of application for a license and the track has  
7 been approved by the board as conforming to the racetrack safety  
8 standards set forth in subdivision (a) of Section 19481.

9 (b) The board shall, within 120 days of the effective date of this  
10 subdivision, adopt emergency regulations in accordance with the  
11 Administrative Procedure Act (Chapter 3.5 (commencing with  
12 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
13 Code) to establish standards governing the employee housing  
14 provided to backstretch personnel at licensed racetracks. These  
15 regulations shall be deemed to be an emergency and necessary for  
16 the immediate preservation of the public peace, health and safety,  
17 or general welfare, shall be commensurate with the housing  
18 standards established in the Employee Housing Act (commencing  
19 with Section 17000 of Division 13 of the Health and Safety Code),  
20 and shall consider the following:

21 (1) The health and safety of the human and equine population  
22 and the necessity for humans and horses to live in close proximity.

23 (2) The housing needs of state or county facilities with live  
24 racing meeting of no more than 43 days in duration that do not  
25 operate as year-round training facilities. The board shall  
26 specifically consider the different needs of these facilities  
27 compared to permanent facilities or other state and county  
28 facilities that function on a year-round basis, including state and  
29 county fair facilities that operate as a year-round training facilities  
30 where horses are stabled and workers live.

31 (3) Compliance of facilities with racing meetings of 19 days or  
32 less to this subdivision shall be contingent on funding in the  
33 2002–03 Budget Act.

34 These emergency regulations shall be submitted to the Office of  
35 Administrative Law for filing with the Secretary of State and  
36 publication in the California Code of Regulations and shall be  
37 replaced by final, permanent regulations within 18 months of their  
38 adoption. Every racing association shall be in compliance with  
39 these housing standards by January 1, 2004.

(c) Commencing January 1, 2004, the board, ~~in conjunction with~~ *with assistance from* the California Department of Housing and Community Development or a local housing authority for the jurisdiction in which the race track is located, shall annually inspect the living conditions of backstretch employee housing to ensure compliance with the housing standards established by the board, the findings or results of which shall be submitted to the board. No license shall be issued to a racing association to conduct a horse race meeting unless the board has inspected the housing conditions that exist on the race track's backstretch and determined the living conditions to be in compliance with the standards established by the board in subdivision (b).

(d) The board may assess a reasonable fee upon racing associations to defray the costs associated with the inspections provided for in subdivision (c).

SEC. 5. Section 19526 is added to the Business and Professions Code, to read:

19526. (a) Each trainer shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, paid to each of his or her employees. ~~Each payroll record shall contain both of the following signed declarations by the trainer, which shall be made under penalty of perjury:~~

~~(1) That the information contained in the payroll record is true and correct.~~

~~(2) That the employer has complied with the requirements of Labor Code and applicable wage orders of the Industrial Welfare Commission.~~

(b) The payroll records enumerated under subdivision (a) shall ~~be certified and shall~~ be available for inspection at all reasonable hours at the principal office of the trainer on the following basis:

(1) A ~~certified~~ copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative upon request.

(2) A ~~certified~~ copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the board and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) On or before January 31 of each year, each trainer shall provide copies of federal W-2 and 1099 tax forms for his or her

1 backstretch employees for the previous calendar year to the  
2 administrator of the pension fund for backstretch employees.

3 (c) The ~~certified~~ payroll records described in this section shall  
4 be on forms provided by the Division of Labor Standards  
5 Enforcement or shall contain the same information as the forms  
6 provided by the division.

7 (d) A trainer shall ~~file a certified copy of~~ *make* the records  
8 enumerated in subdivision (a) *available* to an employee or his or  
9 her authorized representative within 10 days after receipt of a  
10 written request.

11 (e) The trainer shall inform the board of the location of the  
12 records enumerated under subdivision (a), including the street  
13 address, city and county, and shall, within five working days,  
14 provide a notice of a change of location and address.

15 (f) In addition to any other penalty imposed by law, any trainer  
16 who fails to provide access to the records enumerated in  
17 subdivision (a) to the board, the employee or his or her authorized  
18 representative, the administrator of the pension or welfare funds,  
19 or to the Division of Labor Standards enforcement as required by  
20 law shall be subject to suspension of his or her license.

21 (g) Except for trainers covered by an operative collective  
22 bargaining agreement pursuant to Section 19613.7, the board ~~shall~~  
23 *may* require, as a condition of issuing or renewing a trainer's  
24 license, that the trainer ~~annually~~ submit a ~~certified~~ declaration that  
25 they have maintained true and correct payroll records and have  
26 complied with the requirements of the Labor Code and applicable  
27 wage orders of the Industrial Welfare Commission.

28 (h) The Labor Commissioner shall establish and maintain a  
29 program to audit the ~~certified~~ payroll records of trainers who are  
30 not parties to a collective bargaining agreement entered pursuant  
31 to Article 2.5 (commencing with Section 19455) and who operate  
32 in California for 90 or more racing days in a calendar year, in a  
33 manner to ensure that every subject licensee is audited at least once  
34 prior to January 1, 2006, ~~and as necessary thereafter to ensure that~~  
35 ~~at least 15 percent of subject trainers are audited each year as part~~  
36 ~~of an ongoing program. This subdivision shall not apply to~~  
37 ~~trainers who have been audited prior to January 1, 2002, provided~~  
38 ~~that audit was not a result of a formal complaint.~~ Evidence of  
39 substantial noncompliance with the Labor Code and applicable

1 wage orders of the Industrial Welfare Commission shall be  
2 referred by the board to the Labor Commissioner.

3 SEC. 6. Section 19556 of the Business and Professions Code  
4 is amended to read:

5 19556. (a) The distribution shall be made by the distributing  
6 agent to beneficiaries qualified under this article. For the purposes  
7 of this article, a beneficiary shall be all of the following:

8 (1) A nonprofit corporation or organization entitled by law to  
9 receive a distribution made by a distributing agent.

10 (2) Exempt or entitled to an exemption from taxes measured by  
11 income imposed by this state and the United States.

12 (3) Engaged in charitable, benevolent, civic, religious,  
13 educational, or veterans' work similar to that of agencies  
14 recognized by an organized community chest in the State of  
15 California, except that the funds so distributed may be used by the  
16 beneficiary for capital expenditures.

17 (4) Approved by the board.

18 (b) At least 50 percent of the distribution shall be made to  
19 charities associated with the horse racing industry. No beneficiary  
20 otherwise qualified under this section to receive charity day net  
21 proceeds shall be excluded on the basis that the beneficiary  
22 provides charitable benefits to persons connected with the care,  
23 training, and running of racehorses, except that type of beneficiary  
24 shall make an accounting to the board within one calendar year of  
25 the date of receipt of any distribution.

26 SEC. 7. Section 19613.8 is added to the Business and  
27 Professions Code, to read:

28 19613.8. Within 60 days of a statewide majority of  
29 backstretch workers having chosen to be represented by an  
30 exclusive collective bargaining agent pursuant to Article 2.5  
31 (commencing with Section 19455) or any other law, the respective  
32 organization of horsemen, or in the case of the thoroughbred  
33 industry the organization of trainers, shall submit a plan to the  
34 board for the administration of the pension program by a joint  
35 labor-management committee *made up of equal representatives of*  
36 *trainers and labor union representatives*, consistent with the  
37 standards established by Section 302 of the Taft-Hartley Act (29  
38 U.S.C. Sec. 5186). Notwithstanding Section 19613, upon  
39 approval by the board, a joint labor-management committee shall  
40 administer the pension program.

SEC. 8. Section 19641.2 is added to the Business and Professions Code, to read:

19641.2. (a) The nonprofit foundation authorized to receive funds pursuant to Section 19641 shall use those funds to administer a health and welfare trust fund without prejudice and for the benefit of every eligible person. ~~The welfare fund and benefits shall be administered consistent with the standards established by the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 and following) subject to the oversight and regulation of the board.~~ *officers and directors of the health and welfare trust fund shall have a fiduciary responsibility to manage the fund for the benefit of the beneficiaries.*

(b) Every employer of backstretch workers shall, upon request, submit or provide access to the administrator of the welfare program for backstretch workers any employment records necessary for prompt payment of benefits and proper administration of the program.

(c) ~~On or before March 1, 2002, the welfare fund board shall be expanded to include two additional holders of groom or stable employee licenses who are currently employed in these occupations at a California horse racing facility. Within 60 days of a statewide majority of backstretch workers having chosen to be represented by an exclusive bargaining agent pursuant to Article 2.5 (commencing with Section 19455) or any other law, that agent shall designate two representatives to replace the board members appointed pursuant to this subdivision.~~ *At least one member of the health and welfare fund board shall be a member without financial interest in the horse racing industry appointed from a list of nominees submitted jointly by the California State Council of the Service Employees International Union, the Jockey's Guild, and the California Teamsters Public Affairs Council.*

(d) Nothing in this section is intended to affect the status of the welfare fund as a charity under Section 501(c)(3) of the federal Internal Revenue Code or its compliance with the Charitable Purposes Act (Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity

1 shall not affect other provisions or applications that can be given  
2 effect without the invalid provision or application.

3 ~~SEC. 10. No reimbursement is required by this act pursuant~~  
4 ~~to Section 6 of Article XIII B of the California Constitution~~  
5 ~~because the only costs that may be incurred by a local agency or~~  
6 ~~school district will be incurred because this act creates a new crime~~  
7 ~~or infraction, eliminates a crime or infraction, or changes the~~  
8 ~~penalty for a crime or infraction, within the meaning of Section~~  
9 ~~17556 of the Government Code, or changes the definition of a~~  
10 ~~crime within the meaning of Section 6 of Article XIII B of the~~  
11 ~~California Constitution.~~

